

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN CONTEMPT, 03UPL35	
Petitioner: THE PEOPLE OF THE STATE OF COLORADO v. Respondent: SUZANNE SHELL	
Suzanne Shell 14053 Eastonville Rd. Elbert, CO 80106 719-749-2971	Case Number: 04SA093
REPLY to RESPONSE TO MOTION TO QUASH CONTEMPT CITATION	

COMES NOW, the Respondent, Suzanne Shell, Pro Se, with her Reply in Response to Motion to Quash the Contempt Citation by the deputy attorney regulation counsel as follows:

1. The subject contempt citation proceeding is not a statutory proceeding, nor a dissolution of marriage proceeding nor an appeal from county to district court, and is, therefore, subject to the Colorado Rules of Civil Procedure pursuant to Rules 1¹ and 81 C.R.C.P. An

¹Rule 1 C.R.C.P. *Scope of Rules (a) Procedure Governed.* These rules govern the procedure in the **supreme court**, court of appeals, district court and superior courts and in the juvenile and probate courts of the City and County of Denver, **in all actions**, suits and proceedings of a civil nature, whether cognizable as cases at law or in equity, and in all special statutory proceedings, with the exceptions stated in Rule 81. They shall be liberally construed to secure the **just**, speedy, and inexpensive determination of every action. Rules of civil procedure governing county courts shall be in accordance with Chapter 25 of this volume. Rules of Procedure governing probate courts and probate proceedings in the district courts shall be in accordance with these rules and Chapter 27 of this volume. (In case of conflict between rules, those set forth in Chapter 27 shall control.) Rules of Procedure governing juvenile courts and

express exception to these rules is required to overcome the applicability of any of these rules. Dallas v. Fitzsimmons, 137 Colo. 196, 323 P.2d 274 (1958).

2. Rule 238 C.R.C.P. is part of the Rules of Civil Procedure addressing contempt proceedings for Unauthorized Practice of Law (UPL) proceedings. Rule 238 does not define what constitutes contempt nor state what remedies may be imposed. Rule 107 C.R.C.P. is the *sole defining authority* for conduct that constitutes contempt of court, what constitutes proper service and what sanctions may be administered. The attorney regulation counsel, in using Rule 238 C.R.C.P., has invoked and relied on the definitions and remedies for contempt found in Rule 107 C.R.C.P. as grounds for seeking punitive sanctions for my alleged acts of indirect contempt.²
3. The deputy attorney regulation counsel served me with a copy of his petition, the contempt citation AND a copy of the original court order which he alleges I violated. Rule 238 C.R.C. P. does not specifically require that a copy of the original court order be included with the petition and contempt citation when served. However, Rule 107 C.R.C.P. DOES mandate that a copy of the original order be served along with the aforementioned documents and affidavit. By including the original order, the attorney

juvenile proceedings in the district courts shall be in accordance with these rules and Chapter 28 made effective on the same date as these rules. In case of conflict between rules those set forth in Chapter 28 shall control. Rules of Procedure in Municipal Courts are in Chapter 30.

²Rule 107 C.R.C.P. Remedial and Punitive Sanctions for Contempt (a) Definitions. (1) Contempt: Disorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; **disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court;** or any other act or omission designated as contempt by the statutes or **these rules.**

regulation counsel has again invoked and conformed to a requirement found only in Rule 107 C.R.C.P.

4. Rule 238 C.R.C.P. does not expressly state any condition or circumstance which would overcome the requirement of an affidavit as mandated in Rule 107 C.R.C.P. Since the attorney regulation counsel invoked Rule 107 C.R.C.P. definitions, selected procedural requirements and sanctions in seeking to find me in contempt of court, he must also be bound by all the procedural requirements of that same rule. He cannot pick and choose which procedures to obey to or discard. His argument that the UPL committee is a substitute for the affidavit is specious and without foundation in law. The determination of the UPL Committee to institute contempt proceedings is merely an internal administrative mechanism which only makes a decision as to whether or not the attorney regulation counsel will or will not pursue contempt of court in any particular instance. It does not expressly substitute for the requirement in C.R.C.P. 107; that the initiation of contempt proceedings be supported by and attached to a sworn affidavit.³ This principle was affirmed in McMullin v. City & County of Denver, 125 Colo. 231, 242 P.2d 240 (1952):

“This rule was not complied with although relied upon for the institution of the action . . . The motion to vacate was granted and the matter dismissed.”

³Rule 107 C.R.C.P. (c) *Indirect Contempt Proceedings. When it appears to the court by motion **supported by affidavit** that indirect contempt has been committed, the court may ex parte order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. The citation and a copy of the motion, affidavit and order **shall be served directly upon such person** at least twenty days before the time designated for the person to appear.*

5. Where there is no affidavit, there is no jurisdiction.

Compliance with the procedure governing contempt matters is essential before jurisdiction to punish for contempt attaches. Urbancich v. Mayberry, 124 Colo. 311, 236 P.2d 535 (1951).

A constructive contempt must be brought to the court's attention by affidavit; this affidavit must state facts which, if established, would constitute a contempt, and if it does not do so the court is without jurisdiction to proceed. Wyatt v. People, 17 Colo. 252, 28 P. 961 (1892).

A judgment of contempt entered without affidavit, notice, or hearing is void for want of jurisdiction. Pomeranz v. Class, 82 Colo. 173, 257 P. 1086 (1927).

6. The rules and their construction are not designed to work injustice. Crosby v. Kroeger, 138 Colo. 55, 330 P.2d 958 (1958). This is a criminal contempt citation seeking punitive sanctions, which, therefore, demands full due process protections. The Colorado Supreme Court abused its discretion when it issued the contempt citation against me without the required supporting affidavit. Furthermore, this court ostensibly possesses the highest knowledge of the law in the state of Colorado. It has defined that very law and the associated rules. By the Colorado Supreme Court's overt failure to apply those laws and rules impartially and fairly to me, this court has maliciously, wilfully and wantonly authorized and employed injurious and abusive 'legal shortcuts' and 'legal fictions' around clearly defined procedural mandates and due process protections. The court's issuance of this fraudulent ex parte contempt citation was *not* based on the mandated affidavit as has been **clearly established in law for over 100 years**. The purpose and effect of this willful and overt failure is to deny me substantive due process and to subject me to intimidating, abusive, harassing and vexatious litigation designed to deprive me of

my liberty and property by bringing the full power of this judicial body to bear against me. Furthermore, the Colorado Supreme Court has maliciously, wilfully and wantonly failed to require the deputy attorney regulation counsel to follow the procedural mandate in Rule 107 C.R.C.P., which clearly and unambiguously requires an affidavit BEFORE issuing the contempt citation. This failure seriously undermines the purpose and effect of the requisite procedural and due process protections and unfairly denies me protections which have been clearly established in law. This failure is maliciously intended to invoke invalid and unlawful jurisdiction for the sole purpose and intent of wreaking substantial injury upon me under the color of law. It also further PROVES that the Colorado Supreme Court has aligned itself with the UPL committee and the attorney regulation counsel. By its very failure to be fair and impartial before issuing the contempt citation, by failing to apply the relevant rules and laws in a manner consistent with the fair application of right and justice, which is administered without sale, denial or delay, the Colorado Supreme Court is further inflicting substantive injustice against me by denying me a fair hearing before an impartial tribunal, which is a critical requirement of due process. ***FOR THE RECORD: The Colorado Supreme Court's issuance of an ex parte contempt citation, based solely on unsupported speculation⁴ of alleged facts citing acts which do not even constitute contempt⁵, being in direct opposition to this court's own***

⁴ There can be no witnesses to acts which have not occurred; without witnesses, there is only a witch hunt based on prejudicial speculation. "Certainly the ascertainment of the quality of contempt 'should not rest on speculation'." People v. Kimsey, 101 Colo. 392, 74 P.2d 663.

⁵ "When an affidavit is presented as a basis of a proceeding for contempt, the court must, in the first instance, examine the same, and, ***if the facts presented do not show that a contempt has been committed, the court will be without jurisdiction to proceed . . .***" Cooper v. People ex

precedent setting decisions and court rules, demonstrates the overt bias against me by the Colorado Supreme Court and exposes the Colorado Supreme Court's vindictive animosity toward me as demonstrated by singling me out for fundamentally unfair, abusive and vexatious court proceedings in order to seek and obtain punitive sanctions against me without sufficient indicia of contempt; and by exposing its over-zealous and abusive endeavors to harass, intimidate and punish me for engaging in my peaceful, statutorily and constitutionally protected occupations and associations. NOTICE is hereby given of long-term, ongoing and grievous violations of my rights by the Colorado Supreme Court and the Unauthorized Practice of Law Committee, jointly and severably, committed outside of all lawful jurisdiction. I demand immediate correction and prevention of all past and future violations.

7. Where sufficient objection is made at the proper time and place, this court has no discretion but to enforce the applicable rule.

It may seem to some that such strict enforcement of our rules of civil procedure may be somewhat harsh, or possibly unnecessary, but this is a matter in which we have, at the most, a limited discretion. *Every litigant has the right to rely upon the rules as written* [emphasis added], and it becomes our duty to enforce them where objection is made in reliance upon the language of the rule cited. We may not make fish of one and fowl of another. Continental Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954).

WHEREFORE by virtue of the deputy attorney regulation counsel's reliance on Rule 107 C.R.C.P. to define contempt and thereby initiate contempt proceedings against me, he has

rel. Wyatt, 13 Colo. 337, 22 P. 790 (1889).

expressly invoked Rule 107 C.R.C.P. Absent any provision in Rule 238 C.R.C.P. expressly negating the affidavit requirement, the attorney regulation counsel must, therefore, conform to all contempt of court procedural requirements mandated within Rule 107 C.R.C.P. This Contempt of Court Citation is not in compliance with the legal and procedural requirements as no sworn Affidavit is presented or attached. It was invoked by fraud upon the court, and that fraud is being perpetuated by the court. As a matter of law, this court lacks jurisdiction and the fraudulent contempt citation, which should never has issued in the first place, must be quashed.

WHEREFORE, the Respondent prays this Court grant her Motion to Quash.

RESPECTFULLY submitted April 26, 2004.

Suzanne Shell

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the attached document **REPLY to RESPONSE TO MOTION TO QUASH CONTEMPT CITATION** was deposited via first class mail, postage prepaid on April 26, 2004:

James C. Coyle
Assistant Regulation Counsel
Attorney for Petitioner
600 17th Street, Suite 200 South
Denver, CO 80202

April 26, 2004

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